

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SADIE LIVINGSTON,

Plaintiff,

v.

Case No.: 1:17-cv-581

SAFEWAY INSURANCE COMPANY,

Defendant.

**NOTICE OF REMOVAL TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO**

COMES NOW the Defendant Safeway Insurance Company (hereafter “Defendant”), by and through its counsel of record, Butt Thornton & Baehr PC (James H. Johansen and Amy E. Headrick), and hereby removes this lawsuit to the United States District Court for the District of New Mexico. As grounds therefore, Defendant states as follows:

1. Plaintiff filed this civil action against the Defendant in the Eleventh Judicial District Court, County of McKinley, State of New Mexico, Case No. D-1113-CV-2017-000152. Plaintiff’s Complaint for Declaratory Judgment (hereafter, the “Complaint”), was filed April 7, 2017, and named as Defendant Safeway Insurance Company.

2. Pursuant to D.N.M. LR-Civ. 81.1(a), a copy of Plaintiff’s Complaint, along with copies of all records and proceedings are attached hereto as Exhibit A.

3. Plaintiff Sadie Livingston is a resident McKinley County, New Mexico, and is therefore a citizen of the State of New Mexico. *See* Complaint, ¶¶ 1.

4. Defendant Safeway Insurance Company is a foreign corporation, incorporated in the State of Illinois with its principal place of business in the State of Illinois. Safeway Insurance

Company is a citizen of Illinois for the purposes of diversity of citizenship under 28 U.S.C. § 1332.

5. There is complete diversity between Plaintiff and Defendant.

6. The Complaint seeks declaratory relief, and pursuant to the New Mexico Rules of Civil Procedure, contains no allegation for damages in a specific monetary amount. The underlying object of Plaintiff's Complaint concerns a claim pursuant to an insurance contract. *See generally Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) ("In actions seeks declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."); *Ullman v. Safeway Ins. Co.*, 955 F.Supp.2d 1196, 1216–17 (D.N.M. 2013).

7. Plaintiff's Complaint seeks to recover the full extent of the uninsured motorist policy issued by Defendant. *See* Complaint, ¶ 13. While Defendant denies it owes anything under the uninsured motorist coverage, the potential amount available, should the Court determine uninsured motorist coverage was not properly rejected, is \$75,000.00.

8. Safeway does not have any of Plaintiff's medical records or bills at this time, but a review of the police report filed in this matter indicates Plaintiff sustained significant injuries in the accident. The police report states Plaintiff was trapped in her vehicle and bleeding heavily. Plaintiff was reportedly airlifted from the scene. According to the Gallup Police Department Case Report, Plaintiff sustained inner cranial bleeding, traumatic brain injury, fractured left ribs and a shattered collarbone. Therefore, while Safeway denies it owes anything under the uninsured motorist coverage, the damages clearly exceed \$75,000.00.

9. Plaintiff's Complaint seeks attorney's fees as permitted by law. *See* Complaint, Prayer, ¶ (b). New Mexico law provides for an award of attorney's fees to an insured who prevails against an insurer who has not paid a claim on any type of first party coverage. N.M.S.A. 1978 § 39-2-1. The amount expended for attorney's fees are a part of the matter in

controversy for subject matter jurisdiction purposes when the state law provides for such fees. *See Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998).

10. Although Safeway denies it owes Plaintiff any amounts, the combined total of the uninsured motorist benefits of the insurance policy and reasonable attorney's fees exceeds \$75,000.00.

11. Plaintiff's Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and which is removable by Defendant under the provisions of 28 U.S.C. §1441 in that:

a. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs; and

b. The matter in controversy is between citizens of different states.

12. Because this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a), this action is removable pursuant to 28 U.S.C. § 1441(a).

13. The state court in which this action was commenced is within this Court's district. Venue is therefore proper under 28 U.S.C. §§ 111 and 1441(a).

14. The Notice of Removal was filed with this Court within thirty (30) days after Defendant was served with Plaintiff's Complaint on April 24, 2017, through the Superintendent of Insurance.

15. Defendant, immediately upon the filing of this Notice of Removal, gave written notice of the filing to Plaintiff as required by 28 U.S.C. § 1446(d) and filed a copy of this Notice of Removal with the Clerk of the Eleventh Judicial District Court, County of McKinley, State of New Mexico, the Court from which this action is removed.

16. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is signed pursuant to Fed.R.Civ.P. 11.

WHEREFORE, Defendant respectfully requests that the above-entitled action remain in this United States District Court for the District of New Mexico.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

Electronically Filed

/s/ James H. Johansen

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I hereby certify that on the 24th day of May, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by e-mail; and electronic means, as more fully reflected on the Notice of Electronic filing:

Amanda R. Lucero

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/s/ James H. Johansen

James H. Johansen